

MARVIN ALLEN

IBLA 92-416

Decided July 17, 1995

Appeal from a decision of the California State Office, Bureau of Land Management, declaring portions of mining claims located on withdrawn lands null and void ab initio. CAMC 251232 through CAMC 251234.

Affirmed as modified.

1. Mining Claims: Lands Subject To--Mining Claims: Location--Mining Claims:
Placer Claims--Mining Claims: Withdrawn Land

In evaluating sketch maps provided by a mining claimant that indicated portions of his placer claims extended onto lands withdrawn from mineral entry, BLM correctly found that any portions of the claims that extended onto the withdrawn lands were null and void ab initio.

APPEARANCES: Marvin Allen, Weaverville, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Marvin Allen has appealed an April 10, 1992, decision of the California State Office, Bureau of Land Management (BLM), declaring null and void unspecified portions of the Nugget Patch 1 through 3 placer mining claims, CAMC 251232 through CAMC 251234, that were found to lie within the Trinity Alps Wilderness. See 98 Stat. 1623 (1984), 16 U.S.C. §§ 1132 note, 1133(d)(3) (1988). Citing 43 CFR 3823.4, the BLM decision found portions of each of the three claims were located on land that was withdrawn on December 31, 1983, from the operation of the mining laws by inclusion within a national forest wilderness; the decision concluded that application of Departmental regulation 43 CFR 3823.4 rendered those portions of the claims within the wilderness null and void ab initio.

The three claims, each comprising 20 acres, were located on January 2, 1992. Copies of location notices furnished to BLM include a map showing that they are all situated within sec. 30, T. 38 N., R. 8 W., Mount Diablo Meridian, California. Therein, the claims are shown to have been located along the east fork of Coffee Creek in an area where the creek forms a corridor entirely surrounded by wilderness, with CAMC 251232 lying entirely in

the NE $\frac{1}{4}$ of sec. 30, while CAMC 251233 and CAMC 251234 are reported to be entirely within the SE $\frac{1}{4}$ (although the map provided with the location notice for CAMC 251233 indicates that it may be principally within the NE $\frac{1}{4}$ of sec. 30). Since the maps provided to BLM by Allen do not show his claims in relation to the wilderness, BLM has furnished an overlay comparison of his maps with the master title plat indicating that portions of each of the three claims extend into land withdrawn for wilderness purposes in 1983. In apparent reliance on this comparison, BLM concluded that portions of each of the three claims invaded the wilderness and declared that, to the extent that they did so, they were null and void ab initio. A timely appeal was filed.

Allen does not, on appeal, deny that the Trinity Alps Wilderness was closed to mineral entry when he located the claims at issue in 1992; nor does he dispute that mining claims located on land closed to entry under the mining laws are null and void ab initio. Instead, he seeks to avoid the effect of the BLM decision by furnishing another map of his claims in support of his appeal. This map, a reduced copy of the master title plat for T. 38 N., does not identify any individual claim, as did the maps furnished on the location notices, but indicates generally by yellow marker that all three claims lie within the Coffee Creek corridor in sec. 30 that is outside the area withdrawn from mineral entry. The diagram now supplied by Allen shows that the claims avoid contact with the wilderness area (which his map acknowledges entirely surrounds them). Indicating that the locations of the three claims have not shifted on the ground, he explains that "[m]y claim locations are filed on the East Fork of Coffee Creek in that area not in the Wilderness as per your enclosed map." The only question raised on appeal, therefore, concerns whether the record supports the finding by BLM that portions of the claims invade the area of wilderness.

[1] Departmental regulation 43 CFR 3833.1-2(b)(7) establishes that a claimant is not required to provide a professional land survey in order to comply with the requirement that he provide a sufficient description of his claims so as to permit BLM to find them on the ground. See Outline Oil Corp., 95 IBLA 255, 259 (1987). Nonetheless, the Allen claims are not described by public land survey subdivisions, and the descriptions on the location notices are themselves ambiguous. Although Allen has now clarified that he wishes to avoid the wilderness with his locations, he has not shown that BLM erred by finding that his claims were invalid to the extent there was a conflict between his locations and the withdrawn lands. See Arley Taylor, 90 IBLA 313, 318 (1986).

While it does appear that the Coffee Creek corridor may be large enough in the east half of sec. 30 to accommodate the three 20-acre claims located by Allen, the maps provided by BLM and Allen do not establish measurements precise enough to permit a definitive statement one way or another. That being the case, the BLM decision must be limited to a finding that any part of the three claims extending onto land withdrawn

from mineral entry is void; as so modified, it is affirmed. Id. If, as Allen contends, there is no part of any of his claims that extends into the area withdrawn from mineral entry, then none of the claims will be affected by the decision as modified. Since the record does not presently provide a sufficient factual foundation to establish the exact boundaries of any of the claims in relation to the withdrawn area, a more precise finding concerning claim validity must await better measurement of the claims, should either BLM or Allen desire it. In the meantime, Allen is on notice that he can obtain no mineral rights in the Trinity Alps Wilderness by his claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified by this decision.

Franklin D. Amess
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

